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TO: **NAME:** Commissioner for Patents
LOCATION: United States Patent and Trademark Office
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Re: Application of Lambeth et al.
"Pollen Polymix Plant Breeding Method Utilizing Molecular Pedigree Analysis"
US Serial No. 09/618,307
Filed: July 18, 2000
Group Art Unit: 1638
Examiner: D. T. Fox

Please find enclosed herein:

- Appellant's Reply Brief

I hereby certify that this correspondence is being filed with the U.S. Postal Service via facsimile to: Appeal Brief, Commissioner for Patents, 703-872-9306 on the below date.

Date:

7/13/05Susan J. Finn
Susan J. Finn**BEST AVAILABLE COPY**

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BRIEF - PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: C.C. Lambeth et al. Attorney Docket No. WEYE115226/23562
Application No: 09/618,307 Group Art Unit: 1638
Filed: July 18, 2000 Examiner: D.T. Fox
Title: POLLEN POLYMIX PLANT BREEDING METHOD UTILIZING
MOLECULAR PEDIGREE ANALYSIS

APPELLANTS' REPLY BRIEF

Seattle, Washington
July 13, 2005

TO THE COMMISSIONER FOR PATENTS:

This Paper is being filed in accordance with 37 C.F.R. § 41.41(a) and in response to an Examiner's Answer mailed on May 17, 2005. In connection with the rejection of Claims 20-31 under 35 U.S.C. § 112 (first paragraph) for lack of enablement, the Examiner's Answer sets forth, for the first time, the position as follows:

The claimed method relies upon the assumption of equal reproductive success for its determination of pedigree and its selection of elite trees for future breeding programs. (Examiner's Answer, sentence bridging pp. 12 and 13.)

Appellants respectfully submit that the Examiner has fundamentally mischaracterized the claimed invention. It is an important advantage of the claimed invention that, by using genetic markers to determine parentage, the claimed method does not rely upon the assumption of equal reproductive success for its determination of pedigree and its selection of elite trees for future breeding programs.

In the Examiner's Answer, the Examiner has set forth a clear explanation of the difference between equal reproductive success, and unequal reproductive success, as follows:

Equal reproductive success may be explained as follows. If the pollen from five different male parents were mixed in equal proportions, and this mixture was used to pollinate a single female parent, then the progeny of this cross should

have equal proportions of genes from each of the five male parents, if equal reproductive success occurred. On the other hand, if pollen from one or more male parents germinated more quickly and/or grew more vigorously than pollen from another male parent; then this pollen would fertilize a higher proportion of eggs from the female parent. This is unequal reproductive success. (Examiner's Answer at p. 12)

By using genetic markers to identify which male parent contributed to a particular cross, it is possible to determine whether equal, or unequal, reproductive success is occurring. Individual trees can be selected for the next generation of breeding by determining which male plant was their parent, thereby ensuring that the desired parentage is included in the next generation of breeding. This is an advantage of the present method that is not taught by the prior art.

Accordingly, appellants submit that the rejection of Claims 20-31 under 35 U.S.C. § 112 (first paragraph) for lack of enablement is improper. A decision reversing the Examiner's rejection and finding all claims to be in condition for allowance is respectfully requested.

Respectfully submitted,

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